

Exhibit B

From: DeBruine, Sean [mailto:Sean.DeBruine@alston.com]
Sent: Thursday, August 20, 2009 11:26 AM
To: Mehta, Sonal; Elan Apple Team
Cc: Reines, Edward
Subject: RE: Elan v. Apple - motion for leave to file surreply

Sonal,

Elan does not consent to Apple filing a Surreply. Contrary to your assumption, Elan did not raise any new arguments in its Reply. Rather, consistent with the purpose of a Reply under the local rules, Elan merely addressed the arguments raised by Apple in its opposition. Because we do not believe that the Surreply is warranted, we also can not agree to the briefing schedule you propose. Moreover, it is unreasonable to delay the decision on whether a Surreply will be accepted until the hearing, or at best the eve of the hearing, on the underlying motion. The briefing requirements under the local rules are set up specifically so that the Court and the parties will have time to prepare for the hearing after briefing is closed. A schedule under which the parties and the Court will not know the scope of the briefing before the hearing begins is unacceptable.

Best regards,

Sean

From: Mehta, Sonal [mailto:Sonal.Mehta@weil.com]
Sent: Wednesday, August 19, 2009 8:01 PM
To: Elan Apple Team; DeBruine, Sean
Cc: Reines, Edward
Subject: Elan v. Apple - motion for leave to file surreply

Sean,

We plan to file a motion tomorrow for leave to file a short surreply that addresses the new argument, authority and evidence on the Rule 11(b)(3) issue raised in Elan's reply brief. Please let us know if Elan will consent to our motion for leave to file the surreply. If not, we will seek an expedited briefing schedule so that it can be heard

with your motion to dismiss on Wednesday. In that case, we propose a schedule whereby Apple files its motion for leave by 5 pm tomorrow, Elan file its opposition by 5 pm on Monday and Apple files its reply, if any, by 5 pm on Tuesday. Please let us know Elan will consent to the shortened schedule.

Thanks in advance for getting back to us.

Sonal

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